

# Agenda Item #3



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

September 13, 2007

By E-Mail and Regular Mail

Benjamin Meiklejohn  
11 Exchange Street  
Portland, ME 04101

Dear Mr. Meiklejohn:

On January 4, 2007, the Ethics Commission staff mailed you a letter notifying you of its preliminary determination that a penalty of \$197.02 was owed for the late filing of the 42-day post-election campaign finance report that was due on December 19, 2006. You responded by paying \$100 of the penalty, and submitting a written statement of your intention to pay the remaining amount of \$97.02 in April 2007.

After not receiving any payment, Candidate Registrar Sandy Thompson e-mailed you on August 31, 2007 and attempted to leave you a voicemail message. On September 10, 2007, I e-mailed you and left you a voicemail message asking for you to confirm whether you would pay the penalty this month. I received no response.

The Commission is required to refer late-filing penalties that remain unpaid for more than 30 days to the State Attorney General pursuant to 21-A M.R.S.A. § 1020-A(10). In practice, the Commission is willing to enter into longer payment periods provided that the late-filers demonstrate good faith in adhering to payment plans. **This is to inform you that the Commission will next meet on September 21 at 9:00 a.m. at the Commission's office at 242 State Street. If the \$97.02 portion of the penalty is not paid by that date, the staff will recommend that the Commission refer the unpaid penalty to the State Attorney General for collection.** You are welcome to attend the meeting to respond to the proposed referral or to submit a written response in advance of the meeting. Please telephone me at 287-4179 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne".

Jonathan Wayne  
Executive Director

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

## Title 21-A, §1020-A, Failure to file on time

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. If a candidate fails to file a report after 3 written communications from the commission, the commission shall send up to 2 more written communications by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the communications required by this subsection is guilty of a Class E crime.

[2003, c. 628, Pt. A, §5 (rpr).]

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (new).]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (new).]

**10. Enforcement.** The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[1999, c. 426, §33 (amd).]

MRSA, §21A SEC.1020A/4,5 (AMD).

IB 1995, Ch. 1, §15 (AMD).

PL 1995, Ch. 483, §15 (NEW).

PL 1995, Ch. 625, §B5 (AMD).

RR 1995, Ch. 1, §10 (COR).

RR 1995, Ch. 2, §38 (COR).

PL 1999, Ch. 426, §32,33 (AMD).

PL 1999, Ch. 729, §5 (AMD).

PL 2001, Ch. 470, §11 (AFF).

PL 2001, Ch. 470, §7,8 (AMD).

PL 2001, Ch. 714, §PP1 (AMD).

PL 2001, Ch. 714, §PP2 (AFF).

PL 2003, Ch. 302, §4 (AMD).

PL 2003, Ch. 448, §4 (AMD).

PL 2003, Ch. 628, §A3-6 (AMD).

RR 2003, Ch. 1, §14 (COR).

**Wayne, Jonathan**

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**From:** Wayne, Jonathan  
**Sent:** Monday, September 10, 2007 11:57 AM  
**To:** 'meiklb@portlandschools.org'  
**Cc:** Thompson, Sandy; Lavin, Paul  
**Subject:** Unpaid Late-Filing Penalty

Sandy Thompson has informed me that you owe \$97.02 on a late filing penalty for your 2006 legislative campaign, and that we received a written statement that we would receive this amount in April 2007. After not receiving the \$97.02, Sandy e-mailed you on August 31 and left you a voicemail asking for an update.

Our next Commission meeting is Friday, September 21. At that meeting, I will recommend that the Commission refer the unpaid penalty to the State Attorney General for collection unless I receive a commitment from you by e-mail no later than 12:00 noon on Thursday, September 13 that you will pay the remaining \$97.02 by the end of this month. If I don't hear back from you, at the end of the day on September 13 I will publish the agenda with the AG referral included as item #3.

I will call you to leave you this message as well. We need to get this resolved. Thank you.

Jonathan Wayne  
Executive Director  
Maine Ethics Commission  
135 SHS  
Augusta, ME 04333

Left voicemail message  
11:59 a.m. 9/10/07  
756-7684  
-Jonathan Wayne

**Thompson, Sandy**

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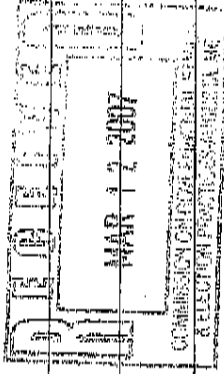
**From:** Thompson, Sandy  
**Sent:** Friday, August 31, 2007 11:43 AM  
**To:** 'meiklb@portlandschools.org'  
**Subject:** Unpaid Penalty of \$97.02 - Please pay ASAP.  
**Importance:** High

Dear Ben – I left a message on your home phone too. Please pay this over due penalty. The last communication from you said that you would pay in April but we have not received a payment. Any questions please call (287-7651) or e-mail me. Thank you.

Sandy Thompson  
Candidate Registrar  
Maine Commission on Governmental Ethics  
and Election Practices  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)

9/10/2007

Company: Ben Merkle, Inc.  
 Address: 11 Exchange St 04101  
 Tel. # 756-7184 Fax # \_\_\_\_\_



Sally Thompson  
Ethics Commission

Please find enclosed \$100 towards  
my assessed penalty. Per our discussions,  
I will make another payment of  
\$ 97.02 in April.

Sincerely,

Ben Merkle

Benjamin J. Merklejohn 12/06  
 11 Exchange St  
 Portland, ME 04102  
 207-756-7684

0972

DATE 3-7-7

52-BB1802112

PAY TO THE ORDER OF State of Maine (Ethics Commission) \$ 100.00

One Hundred and 00/100

LEAVE  
 FRONT  
 OF CHECK  
 DOLLARS

**UCU** University Credit Union  
 Portland, Maine 04101-2001  
 www.ucu.org

The Payee's Signature Should Be

penalty-Ethics Commission

MEMO

MP



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

January 4, 2007

Benjamin Meiklejohn  
11 Exchange Street  
Portland, ME 04101

**BY CERTIFIED MAIL**

Dear Mr. Meiklejohn:

RE: Late 42-Day Post-General due 12/19/2006

You filed a 42-Day Post-General report on 12/20/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$197.02. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Nathaniel Brown  
Candidate Registrar

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

# COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

## PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

### BASIS FOR PENALTIES 21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater amount of the total contributions received or expenditures made during the filing period

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

X 2 Number of calendar days late

\$50.00 Total penalty

### Your penalty is calculated as follows:

Contributions/Expenditures: \$ 6,567.38

Percent prescribed: X .03

\$ 197.02

Number of days late: X 1

Total penalty accrued: \$ 197.02

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

### MAXIMUM PENALTIES 21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),  
6 days before an election, 42 days after an election, and for 48-hour reports;

\$1,000 for semiannual reports.

### FOR 6/7/06 EXPENDITURES





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

January 4, 2007

Benjamin Meiklejohn  
11 Exchange Street  
Portland, ME 04101

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$197.02 applies for the late filing of your 42-Day Post-General report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Nathaniel Brown at 287-7652.

Cut Along Dotted Line

For Office Use Only:  
Account: CGEEP  
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

From: Benjamin Meiklejohn

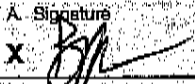
RE: Penalty for late filing of 42-Day Post-General report

Amount Enclosed: \$ \_\_\_\_\_

Check/M.O. No.: # \_\_\_\_\_

Please Make Check or Money Order Payable to Treasurer, State of Maine

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece.</li> </ul>		A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
Benjamin Meiklejohn 11 Exchange Street Portland, ME 04101		B. Received by (Printed Name) Benjamin Meiklejohn C. Date of Delivery	
		Address different from item 1? <input type="checkbox"/> Yes delivery address below: <input type="checkbox"/> No	
		<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label) 7005 3110 0000 2803 7089			

PS Form 3811, August 2001

Domestic Return Receipt

102585-02-M-1540

U.S. Postal Service  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Sent To  
Ben. M. 42 PG  
Street, Apt. No.,  
or PO Box No.  
City, State, ZIP+4

PS Form 3811, June 2002

7005 3110 0000 2803 7089